IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 5 of 1991

with

INCOME TAX REFERENCE Nos 336 and 341 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

DELWADA INVESTMENTS PVT LTD

Appearance:

1. INCOME TAX REFERENCE No. 5 of 1991

MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1

MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In these references at the instance of the revenue, the following question is referred for our opinion in respect of assessment years 1982-83 (ITR No. 5/91) and 1983-84 (ITR Nos.336 and 341 of 1993):-

"Whether, the Appellate Tribunal is right in law and on facts in holding that credit for T.D.S. should be given in the computation of interest under section 215 of the Income-tax Act ?"

2. We have heard Mr BB Naik learned counsel for the revenue and Mr RK Patel learned counsel for the assessee.

3. For taking the aforesaid view that tax deductible at source should be deducted and thereafter interest should be calculated, the Tribunal relied on its decision in Kanchanjanga Investment P. Ltd. (ITA No.2037/Ahd/86 dt. 7-6-1988). The decision of the Tribunal in the aforesaid case in Kanchanjanga Investment P. Ltd and other cases came up for consideration of this Court in CIT vs. Ranoli Investment P. Ltd and others (1999) 235 ITR 433. After considering all the relevant provisions of the Income Tax Act, 1961, this Court held that the words "reduced by the amount of tax deductible" which appear in sub-section (5) of section 215 also occur in clause (iii) of section 209(1)(a) dealing with computation of advance tax. The amount of tax deductible in accordance with section 194A would obviously mean the tax as was required to be deducted in respect of the interest income at the time of credit to the account of the payee or payment whichever is earlier and concluded that the Tribunal was right in holding that tax deductible at source should be reduced from the tax determined on the basis of regular assessment and thereafter, the liability to pay interest should be calculated under section 215 of the Income-tax Act, 1961.

4. The learned counsel for the revenue agrees that the aforesaid decision would cover the question referred in these references. Hence, following the aforesaid decision, we are of the view that the Tribunal was right in holding that tax deductible at source should be deducted and thereafter interest should be calculated.

Accordingly, our answer to the question referred to us is in the affirmative i.e. in favour of the assessee and against the revenue.

6. The References accordingly stand disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-